***THE HON'BLE Ms. JUSTICE G. ROHINI**

+ WRIT PETITION NO.18572 OF 2005

% 27/06/2006

Padmanabhuni China Subba Rao … Petitioner

Vs.

$ 1. The Special Deputy Collector, Tribal Welfare,
Polavaram, West Godavari District, and
Two others. .. Respondents

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> Head Note:

! Counsel for the petitioner : Sri P.R.K.Amarendra Kumar

^ Counsel for the respondents 1 & 2: Govt. Pleader for Social Welfare
Counsel for the respondent No.3 : Govt. Pleader for Home

Cases referred :

[1] 2000 (4) ALD 443 (DB)
2 2005 (4) ALD 498
3 2002 (4) ALT 669 (D.B.)
4 1994 (2) An.W.R. 216

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18572 OF 2005

DATED: 27th JUNE, 2006.

Between :

Padmanabhuni China Subba Rao … Petitioner

And

1. The Special Deputy Collector, Tribal Welfare, Polavaram, West Godavari District, and Two others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18572 OF 2005

ORDER :

The petitioner claims to be the absolute owner of Ac.4-80 cents of land situated in R.S.No.67 of Koya Rajahmundry village, Buttaigudem Mandal, West Godavari District, which is declared as a scheduled area. It is not in dispute that the petitioner is a non-tribal and after the commencement of the A.P. Scheduled Areas Land Transfer Regulation of 1959 (for short, 'Regulation 1 of 1959), the Special Deputy Collector (Tribal Welfare), K.R. Puram, initiated proceedings for eviction alleging that the petitioner was in possession of the land in question, in violation of the provisions of Regulation 1 of 1959. However, after due enquiry, by order dated 5-12-1995 disallowed the said proceedings and the said order has become final. Subsequently, the 1st respondent initiated fresh proceedings of eviction in SR.No.74 of 2005 and accordingly a notice under rule 7 (2) of the Rules, dated 27-7-2005 was issued calling upon the petitioner to show-cause as to why he should not be evicted from the land in question and why the same should not be restored to the transferor alleging that the said land was transferred in his favour in contravention of Section 3 (1) of Regulation 1 of 1959.

Aggrieved by the said action of the 1st respondent, this writ petition is filed contending that the same would amount to reviewing the order dated 5-12-1995 which became final. The petitioner accordingly seeks a Writ of Mandamus declaring that the action of the 1st respondent in initiating fresh proceedings in SR.No.74 of 2005 is arbitrary, illegal and without jurisdiction.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner while placing reliance upon the decisions of the Division Bench in C. RAMALINGA RAJU v. DISTRICT COLLECTOR, ELURU, W.G. DISTRICT[1] and MALLINA VENKATARAO v. DISTRICT COLLECTOR, W.G. DISTRICT, ELURU[2] and an unreported judgment in W.P.No.10444 of 1999 dated 25-1-2000 vehemently contended that since the earlier order passed by the Special Deputy Collector disallowing the eviction proceedings have become final, the same cannot be reviewed in the absence of an enabling provision under Regulation 1 of 1959.

On the other hand, the learned Government Pleader contended that the impugned notice being a show-cause notice, the writ petition is premature and liable to be dismissed on that ground alone. Even on merits, the learned Government pleader contends that since the parties to the proceedings are different, the earlier order does not operate as res judicata.

Under Section 3 (2) (a) of Regulation 1 of 1959 the proceedings for ejectment can be initiated either on application by anyone interested or suo motu by the competent authority.

In the case on hand, admittedly, the earlier proceedings vide SR.No.29 of 1995 were taken up suo motu by the Special Deputy Collector and after affording an opportunity to the petitioner, the proceedings were disallowed. However, from the counter-affidavit filed in the present writ petition, it is clear that the fresh proceedings have

been initiated on a complaint made by one Madi Durga Rao, who is a tribal, alleging that the writ petitioner is in possession of the lands in contravention of the provisions of Regulation 1 of 1959 and requesting to take necessary action for restoration of the lands after evicting the writ petitioner. Pursuant to the said complaint, fresh proceedings were initiated and the impugned show-cause notice has been issued to the writ petitioner. Thus, it is clear that the parties to the present proceedings are different and there is every likelihood of fresh material being produced by the complainant to establish the allegation that the writ petitioner is in illegal possession.

It is true that in C. RAMALINGA RAJU'S case (1 supra) the Division Bench held that in the absence of an enabling provision in Regulation 1 of 1959, the Special Deputy Collector is not competent to initiate fresh proceedings for eviction. However, a perusal of the said order shows that no ratio as such was laid down by the Division Bench. However, in the facts and circumstances of the said case, wherein the fresh proceedings were initiated only on a letter addressed by the Mandal Revenue Officer stating that the earlier order rendered by the Special Deputy Collector (TW) was doubtful, the Division Bench held that the initiation of fresh proceedings was impermissible.

As noted above, the facts in the present case are entirely different and therefore the above decision is not applicable.

As a matter of fact, in SPECIAL DEPUTY COLLECTOR (TRIBAL WELFARE) v. DATLA VENKAPATHI RAJU[3], having considered an identical issue, it was held by the Division Bench that where the issue that arose for decision in the earlier proceedings and in the fresh proceedings is different and where the parties to the proceedings are different, the fresh proceedings cannot held to be illegal. In the said decision, the Division Bench has also accepted the view expressed in G. RAGHAVULU vs. AGENT TO

GOVERNMENT[4] that the principle of res judicata shall be applied with caution in dealing with a case arising under the Regulation meant for the protection of the tribes and if the proceedings were dropped earlier for the reason that the tribal could not produce sufficient evidence, it does not preclude a subsequent enquiry.

Hence, I do not find any reason to declare the impugned show-cause notice as either arbitrary or illegal. The truth or otherwise of the allegations in the fresh proceedings has to be decided after due enquiry and this is not a fit case warranting interference by this Court at the threshold.

Though the learned Counsel for the petitioner has cited a decision in W.P.No.14948 of 1999, dated 31-12-1999 whereunder a show-cause notice was quashed, a perusal of the said order shows that this Court interfered with the show-cause notice only in the peculiar facts and circumstances of the said case and the same cannot be taken as a precedent. Similarly, the decision in W.P.No.10444 of 1999, dated 25-1-2000 is also not applicable to the case on hand.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. However, the petitioner is granted liberty to submit his explanation to the impugned show-cause notice within two weeks from the date of receipt of this order, in which event the same will be considered and appropriate orders will be passed after following due process of law. No costs.

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G. ROHINI, J.

Dt. 27–06-2006

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Note:- LR copy to be marked.

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[1] 2000 (4) ALD 443 (DB)

[2] 2005 (4) ALD 498

[3] 2002 (4) ALT 669 (D.B.)

[4] 1994 (2) An.W.R. 216